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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SRINIVAS V.R. GUTTA,
J. DAVID SCHAFFER, and KAUSHAL KURAPATI

Appeal 2009-008015
Application 09/875,594
Technology Center 2100

Before: THU A. DANG, CAROLYN D. THOMAS, and
DEBRA K. STEPHENS, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) (2002) from a final rejection of claims 1-3, 9-11 and 17-22. Claims 4-8 and 12-16 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b) (2010).

We AFFIRM.

Introduction

According to Appellants, the invention is a system and method “that employ an electronic program guide to assist a media user in managing a large number of media-content choices (e.g., television programming, chatrooms, on-demand video media files, audio, etc.).” The system suggests choices to a user and takes actions based on the suggestion. The present invention seeks to address disadvantages of prior art classifiers modules for recommending programs. (Spec. 1 and 2).

STATEMENT OF CASE

Exemplary Claim

Claim 1 is an exemplary claim and is reproduced below:

1. A method, operable on a computer system, for determining whether to recommend a program, said method comprising the steps of:

receiving a first program record representing a first program, wherein the first program record includes at least one key field;

retrieving a plurality of program records from a database, wherein at least one of the program records includes at least one key field;

converting each key field of the first program record into a feature value;

identifying a second program record of the plurality of program records that qualifies as a nearest neighbor of the first program record using the feature value, the key fields of the plurality of program records and a distance measurement method; and

determining, based on the identified second program record, whether to recommend said first program.

Prior Art

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Uehara US 2002/0056095 A1 May 9, 2002

REJECTIONS

Claims 1-3, 9-11 and 17-22 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Uehara. (Ans. 4-9).

GROUPING OF CLAIMS

Appellants argue all of the claims collectively as a group on the basis of independent claim 1 (Br. 5-9). We accept independent claim 1 as the representative claim. We will, therefore, treat claims 2, 3, 9-11 and 17-22 as standing or falling with representative claim 1.

We accept Appellants' grouping of the claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

35 U.S.C. § 102(e)

Appellants argue their invention is not anticipated by Uehara because the reference fails to show all of the limitations cited in the independent claims and the claims depending therefrom. (Br. 5).. More specifically, Appellants allege that the reference does not disclose using feature vectors of a plurality of programs to recommend a first program based on feature values, key fields, and a distance measure (*Id.* 6-8). According to Appellants, Uehara discloses arranging the features and using information in a user profile, or user inputs, to recommend a program (Br. 8).

In response, the Examiner maintains that Uehara discloses video program content classification for a viewer. Further, the Examiner finds Uehara discloses a video contents dividing part which divides the obtained video contents (time-series data) into video contents segments on a program basis, a cut switch point basis, a predetermined time basis. The Examiner also finds that Uehara describes a feature value extracting part which extracts feature values representing the contents of each video contents segment obtained by the video contents dividing part. Additionally, according to the Examiner, Uehara discloses a video contents dividing part for at least one key field, and that each key field is converted to feature values and the feature is used for classification to recommend the program by using close distance method. Thus, Uehara teaches, “recommending a first program based on key field, feature values, and distance measure.” (Ans. 9-10).

Issue: Has the Examiner erred in finding that Uehara discloses “identifying a second program record...using the feature value, the key fields of the plurality of program records and a distance measurement method; and determining, based on the identified second program record, whether to recommend said first program” of claim 1?

FINDINGS OF FACT (FF)

Uehara

(1) Video contents distributed by digital broadcasting are obtained and divided into video contents segments on a channel basis, a program basis, or a predetermined time basis. A collection of icons corresponding to the respective video contents segments can be displayed in accordance with a particular viewpoint when it is arranged in the position of the classification and arrangement results. The classification and arrangement are calculated according to the feature value of each video contents segment. Icons corresponding to the video contents segments are re-created by newly setting a division basis arbitrarily, the feature values of the video contents segments on the newly set division basis are extracted, and icons corresponding to video contents segments are rearranged for display. (Abstract).

(2) A video contents obtaining part 10 obtains video contents distributed by broadcasting in a digital form, cable broadcasting, or the like. A video contents dividing part 11 divides the obtained video contents (time-series data) into video contents segments on a program basis, a cut switch point basis, a predetermined time basis, or the like. A feature value extracting part 12 extracts feature values representing the contents of each video contents segment obtained by the video contents dividing part 11.

Herein, examples of the feature values include information representing the visual contents of a video contents segment, information representing the audio contents of a video contents segment, and information representing the semantic contents of a video contents segment. (Spec. [0046]-[0048]).

ANALYSIS

We adopt the Examiner's findings and find Appellants arguments unpersuasive. We emphasize the following points.

According to Uehara, a program record that qualifies as a nearest neighbor of the first program record is identified using the feature value, the key fields of the plurality of program records, a distance measurement method (FF 1 and 2 and Ans. 4, 5, 9, and 10). We also agree with the Examiner's findings that Uehara discloses recommending a program based on the identified second program record (Ans. 4, 5, 9, and 10. *See also*, Uehara, [0090]-[0097]). Specifically, Uehara discloses a classification and arrangement display part that displays the classification and arrangement results- and thus, the recommendation. Although a user profile may be used initially in filtering programs (*See e.g.*, Fig. 4, element 42 and Fig. 7, step 701), Uehara also discloses that the second program record is used in determining whether the first program will be recommended (*See e.g.*, Fig. 4, elements 44-48; Fig. 8; and Ans. 4, 5, 9, and 10).

Thus, we find Uehara "identifying a second program record...using the feature value, the key fields of the plurality of program records and a distance measurement method; and determining, based on the identified second program record, whether to recommend said first program."

The argued limitations appear in some of the independent claims but not all. Therefore, Appellants' arguments have been considered but applied only to claims that have the limitations argued. Thus, these arguments have been applied to claims 1-3 and 17-19. The remaining independent claims, claims 9-11, do not recite the argued limitations. Therefore, Appellants have not presented any arguments for these remaining claims.

Appellants do not challenge or otherwise address the Examiner's rejection of claims 9-11 under 35 U.S.C. § 102(e) and therefore fail to present evidence that rise to the level of a separate argument requiring our consideration. *See Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008) (“When the appellant fails to contest a ground of rejection to the Board, section 1.192(c)(7) [(now section 41.37(c)(1)(vii))] imposes no burden on the Board to consider the merits of that ground of rejection.... [T]he Board may treat any argument with respect to that ground of rejection as waived.”); *see also In re Guess*, 347 Fed. Appx. 558, 559 (Fed. Cir. June 9, 2009) (“Appellants failed to argue that any limitations unique to [the claims] survive [the rejection]. Appellants have therefore waived any such arguments on appeal.”) (*citing In re Watts*, 354 F.3d 1362, 1367 (Fed. Cir. 2004)).

Accordingly, Appellants have not shown the Examiner erred in finding Uehara anticipates the invention as recited in independent claims 1-3, 9-11, and 17-19. Dependent claims 20-22 were not separately argued and thus, fall with independent claims 1 and 2, respectively.

DECISION

The Examiner's rejection of claims 1-3, 9-11 and 17-22 1 under 35 U.S.C. § 102(e) as being anticipated by Uehara is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

Vsh